

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0827**

Aretina Tiaira Williams, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 6, 2023
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-17-17217

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Appellant Aretina Williams pleaded guilty to charges related to an alleged personal-care-assistant-fraud scheme. The district court sentenced her to 57 months' imprisonment but, uncertain about whether insurance-backed surety bonds would cover a portion of the victim's requested restitution, the court reserved the issue of restitution. The district court eventually ordered Williams to pay over one million dollars in restitution. Williams

challenges the restitution order on appeal, contending that the district court lacked the authority to award restitution after it sentenced her. Because the district court did not know the extent of harm to the victim when it sentenced Williams, it had the statutory authority to wait to decide restitution. We therefore affirm.

FACTS

Investigators believed that appellant Aretina Williams and others illegally billed the Minnesota Medical Assistance program through a personal-care-assistant business between 2011 and 2017 by submitting fraudulent claims, stealing identities to submit false claims, and paying kickbacks to the business's clients. The state charged Williams with attempted theft by swindle and aiding and abetting theft by false representation. Williams pleaded guilty to six of the eleven charged counts in February 2019. The Minnesota Department of Human Services submitted an affidavit to the district court on the same day Williams pleaded guilty, claiming a loss of \$1,139,945.67 and seeking restitution.

The district court sentenced Williams to serve concurrent prison terms, the longest of which was 57 months. The state informed the district court that Williams's mother, who had participated in and been convicted for her role in the scheme, had a hearing the following week to challenge her restitution obligation. Williams's mother had moved to reduce her restitution obligation in part by the amount that insurance-backed surety bonds might mitigate the state's loss. The state indicated that it intended to ask the district court to order that Williams and her mother pay the same restitution amount. The district court therefore reserved the issue of Williams's restitution for sixty days.

Two months later the district court ordered Williams to pay \$1,139,945.67 in restitution, jointly and severally with her mother. The following month the district court denied Williams's mother's motion to reduce her restitution. Williams then unsuccessfully moved to reduce the restitution amount based on her inability to pay.

Two years after the district court sentenced Williams and ordered restitution, Williams petitioned for postconviction relief, asserting that the district court had lacked the authority to order restitution after it sentenced her. The district court construed Williams's petition as a motion to correct an illegal sentence. It denied the motion, reasoning that it was authorized to order restitution after it sentenced Williams because, at the time of her sentencing, the district court was uncertain whether the surety bonds would reduce the loss Williams should be obligated to pay in restitution.

Williams appeals.

DECISION

Williams argues that the restitution order was not authorized by law. Restitution can be challenged in a motion to correct an illegal sentence, and we review the denial of a motion to correct a sentence for an abuse of discretion. *Evans v. State*, 880 N.W.2d 357, 359–60 (Minn. 2016). A court may correct a sentence not authorized by law at any time. Minn. R. Crim. P. 27.03, subd. 9. The district court's authority to order restitution raises a question of law subject to our de novo review. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). Williams's challenge fails under this standard.

Williams contends that, because the district court knew the extent of the victim's loss at the time of sentencing, it lacked the authority to defer ordering restitution. A crime

victim is entitled to restitution, and the district court may reserve the issue of restitution if an affidavit or competent evidence of the loss is not received in time to be considered at the sentencing hearing. Minn. Stat. § 611A.04, subd. 1(a) (2022). But the district court may issue an order of restitution after the sentencing or dispositional hearing if specific criteria are met:

- (1) the offender is on probation, committed to the commissioner of corrections, or on supervised release;
- (2) sufficient evidence of a right to restitution has been submitted; and
- (3) the true extent of the victim's loss or the loss of the Crime Victims Reparations Board was not known at the time of the sentencing or dispositional hearing, or hearing on the restitution request.

Id., subd. 1(b) (2022). Because Williams was committed to the commissioner of corrections and the victim in this case (the state, through the department of human services) had submitted an affidavit evidencing its right to restitution, the only question here is whether “the true extent of the victim's loss . . . was not known at the time of the sentencing.” *Id.*, subd. 1(b)(3). Williams contends that it was known. We conclude that it was not.

The district court's decision to reserve the question of Williams's restitution amount (which, we observe, was intended only to potentially benefit Williams by justifying a lower restitution amount) rested on the possibility that the state would seek restitution at an amount that represented the state's actual loss, which might have been lower than the state's reported loss. The record supports the district court's understanding that, although the state submitted its loss affidavit and request for restitution three months before Williams's sentencing, the district court lacked competent evidence of the proper

restitution amount before sentencing because of the pending motion in Williams's mother's case. Given that the district court was considering Williams's mother's motion to mitigate the amount of the fraud victim's true loss and agreed that the defendants in the separate cases should be jointly and severally liable for the same restitution amount, the district court did not know "the true extent of the victim's loss" until after it sentenced Williams.

Williams argues that even if the state could have collected payment from the surety bonds, the district court knew the true extent of the loss because it could have ordered Williams to reimburse the insurance company, making the total amount of restitution the same. We need not consider this theory because, although courts may order defendants to pay restitution to insurance companies, Williams does not assert or cite the record to suggest that the district court knew the identity of the insurance company or even that the parties had established that the insurer was in fact a victim. *See State v. Jola*, 409 N.W.2d 17, 19 (Minn. App. 1987). And given the nature of the pending motion to mitigate the restitution amount, it is evident that the district court lacked the knowledge at sentencing to determine how it would allocate the restitution amount to the alleged victim or victims. We add that the fact that the district court ordered restitution before knowing the outcome of the mother's hearing also does not change our opinion. The district court "may *amend or issue* an order of restitution after the sentencing or dispositional hearing" if the statutory criteria are met. Minn. Stat. § 611A.04, subd. 1(b) (emphasis added). The district court extended its time to order restitution by sixty days. It followed its own schedule and issued its restitution order only days before its deadline, before the outcome of Williams's mother's motion had been determined. The district court may have still lacked certain

knowledge of the loss amount, but if it became necessary it could have reduced its restitution order in the event the motion in the other case prevailed.

Affirmed.